On the face of that section no person is liable to any sort of conviction unless he has erected or caused or permitted to be erected some unlawful structure. In the present case the landlord did not erect the structure. It is true (or at least it may be true) that his predecessor in title permitted such an erection and he was thereby exposed to conviction. But the conviction to which he was thereby exposed was not for anything the tenant had done but for something he had done himself, for his own giving of permission.

It is argued, however, that while that may be so we should go on to read the next following sub-section which is as follows :—

"In every case the owner of the house shall be deemed to have permitted such erection until the contrary is proved."

This argument confuses facts with evidence which may or may not be true. Either the landlord permitted the erection or he did not permit it. If he did permit it he was exposed to conviction. If he did not permit it he was not exposed to conviction regardless of anything the tenant might have done. And I fail to see how that position is in any way detracted from by the existence of a purely evidential provision which may or may not lead to a correct result in any particular case. The sub-section says the owner of the house shall be deemed to have permitted the erection and then only unless he can prove the contrary. It does not say he shall be deemed to be guilty of the offence of permitting it.

I have myself dealt with provisions of this nature in the case of *Tong Peng Hong v. Public Prosecutor*[2] where I said :—

"I would make certain observations of a general nature regarding statutory provisions of this sort which appear to detract from the force of the ordinary rule that in a criminal prosecution the onus lies upon the prosecution to prove every ingredient in the offence charged against the accused person ..... The object of such provisions is not to create new offences. Nor is it to lead to the conviction of innocent persons. It is to ensure that the Courts should draw from certain facts, once they are proved, the inferences that experience has shewn a reasonable man would normally draw from such facts ..... I would emphasize the point that such provisions are in truth statutory directions as to the drawing of inferences."

A fact is a fact. It exists or it does not exist. And putting aside any considerations of a metaphysical nature its existence is independent of the ease or difficulty with which it may be proved.

The considerations I have stated lead me to the conclusion that the present appeal should be allowed.

Before departing from the case, however, I should say a few words about the Singapore case of *Sarah Cashin v. Goh Kah Seng*[1], *supra.*

The facts in that case were to all intents and purposes the same as the facts of the present case and the provisions of the Singapore statutes involved are the same on all material points as the provisions of the Federation statutes with which we are concerned here. It is thus of great persuasive authority. But it is not binding on this Court and with the greatest respect for the learned Judge who decided it the course of reasoning I have stated compels me with much regret to the conclusion that this Court should not follow it. His Lordship's opinion is set out in the following passage from his judgment (at page 54) :—

"In the light then of the construction of Section 15(h)* I have favoured it follows that once the defendant had erected the unauthorised partitions the plaintiff was in the position of being deemed to have permitted the erection and so was exposed to prosecution. It is I think true to say that in the course of events the case took the plaintiff never was in any serious danger of finding herself in the City Magistrate's Court, but that does not, I think, alter the fact that the defendant's breach did expose her to prosecution."

In my view, exposure to prosecution is not enough. There must be exposure to conviction and there is no exposure to conviction unless facts exist which would support a conviction.

In all the circumstances of the case I would allow the present appeal with costs and would order that the order made in the High Court be set aside and that judgment be entered for the present appellant with costs here, in the Court below and in the Sessions Court.

Hill J. : — I have read the judgment of the learned Chief Justice. I respectfully agree.

I only wish to add with regard to the Singapore case of *Sarah Cashin v. Goh Kah Seng*[1] that I too am regretfully compelled to the conclusion that it was wrongly decided. It is my view too that exposure to prosecution is not enough. There must be exposure to conviction and I do not consider that the facts of the case forming the subject matter of this appeal would support a conviction.

Smith J. : — I have had the benefit of reading the judgments of my brethren with whom I agree. I have nothing to add to their judgments.

Appeal allowed.

Solicitors : *N. Sharma; Lovelace & Hastings.*

L. S. ATTIAS v. R. C. NON & ANOR.

[Divorce Jurisdiction (Knight Ag. C.J.) August 28, 1957]

[Singapore — Divorce No. 51 of 1956]

Divorce — Petition for — Delay — Whether culpable — Exercise of discretion in favour of petitioner — Divorce Ordinance (Cap. 40).

Practice — Resumed hearing before different Judge — No conflict of evidence.

The petitioner and the respondent were married in Singapore on November 3, 1925 under the provisions of the Civil Marriage Ordinance. In or about August 1926

* Of the Singapore Control of Rent Ordinance, 1953, now Cap. 242.

the respondent deserted the petitioner and although during the next five years he made several attempts to persuade her to return to him, the respondent steadfastly refused to do so saying that she did not want to live with him. From 1932 to 1942 the petitioner was in the Federation of Malaya and from 1942 to 1945 he was interned. In 1946 he was released but was unemployed. The petitioner said he lost touch of his wife until 1955 and that in 1956 he discovered that she was living with the co-respondent. He also said that from 1947 to 1954 he was saving up money in order to consult solicitors to get a divorce. The petitioner admitted that since 1949 he had been living with another woman and asked for the Court's discretion to be exercised in his favour. At the hearing of the petition, the learned Chief Justice after hearing the petitioner and a witness called by him adjourned the case so that the question of delay and the exercise of the Court's discretion in the light of the delay could be argued by the Attorney-General. The hearing was resumed before the Acting Chief Justice, as the Chief Justice was on leave.

Held: (1) as there was no conflict of evidence in this case the hearing could be resumed before a different Judge and there need be no rehearing of the petition;

(2) the delay in the very special circumstances of this case was not culpable;

(3) in all the circumstances of the case and particularly because it will enable the petitioner to marry the lady with whom he has been living since 1949 the Court should exercise its discretion in favour of the petitioner both as regards his own adultery and the delay in bringing the proceedings.

Case referred to :—

(1) *Key v. Key* (1956) 3 All E.R. 955.

The following cases, in addition to that referred to in the judgment were cited in argument: *Re British Reinforced Concrete Co.'s Application* (1929) 45 T.L.R. 186; *Saminathan v. Saminathan* (1941) M.L.J. 79; *Pellew v. Pellew* 1 Sw. & Tr. 583, 164 E.R. 856; *Binney v. Binney* (1936) 2 All E.R. 409; *Brougham v. Brougham* (1895) P. 288; *Purton v. Purton* (1956) 3 All E.R. 952; *Brown v. Brown* (1957) 2 All E.R. 212; *Harrison v. Harrison* 164 E.R. 1315; *Mason v. Mason* (1883) 8 P. &. D. 21; *Black v. Black* (1922) Times, June 15th; *Lowe v. Lowe* (1952) 2 All E.R. 671; *Blunt v. Blunt* (1943) A.C. 517; *Mortimer v. Mortimer* (1820) 161 E.R. 753; *Short v. Short* (1874) 3 P. & D. 193; *Beauclerk v. Beauclerk* (1890) P.D. 189; *Johnson v Johnson* (1901) P. 193; *Rickard v. Rickard* (1921) 37 T.L.R. 571; *Greenwood v. Greenwood* (1937) 3 All E.R. 63; *Newman v. Newman* (1870) 2 P. & D. 57; *Stevenson v. Stevenson* (1947) W.N. 83.

DIVORCE.

G. Abisheganaden for the petitioner.

Ahmad bin Mohamed Ibrahim (Senior Crown Counsel) for the Attorney-General.

Knight Ag. C.J. : — These proceedings were commenced on 1st April 1957 before the learned Chief Justice, who adjourned them that day so as to enable the Attorney-General to argue a point of some difficulty which had arisen during the course of the hearing. The petition was not defended and there was thus no conflict of evidence. I therefore decided that as it would be a hardship for the petitioner to await the return of the Chief Justice to the Colony I would take over the proceedings at the resumed hearing and deal with the point to be argued on behalf of the Attorney-General.

The facts, which are not in dispute, are as follows. On 9th November 1925 the petitioner and the respondent were married in Singapore under the provisions of the Civil Marriage Ordinance. In or about August 1926 the respondent deserted the petitioner and although during the next five years he made several efforts to persuade her to return to him, the respondent steadfastly refused to do so saying that she did not want to live with him any more. Thereafter, according to the petitioner, he lost track of his wife until 1955 (since 1949 he has been living with another woman as admitted in his discretion statement) and discovered in 1956 that she was living with the co-respondent. Evidence regarding this adultery was given by a private detective.

The point upon which the learned Chief Justice required argument from the Attorney-General was what effect this inordinate lapse of time, i.e. between the date of respondent's desertion and the filing of the petition in October 1956, together with the admitted adultery of the petitioner had upon the situation?

At the resumed hearing Mr. Ahmad Ibrahim, of the Attorney-General's Chambers, presented a lucid and detailed argument dealing with the relevant authorities, for which I am most indebted to him and finally submitted that in all the circumstances of this case the delay was not so unreasonable as to require the Court to act under section 8(2)(a) of the Divorce Ordinance (Cap. 40) and to refuse the petitioner the relief sought.

I have no doubt that for many years the petitioner completely overlooked the existence of his wife and that it was only in 1954 (at the earliest) that he discovered her whereabouts and the fact that she was living in adultery. I also accept that until very recently he was always short of funds and poverty has been held in *Key v. Key*[1] to excuse delay which otherwise might be deemed to be unreasonable.

In all the circumstances and particularly because it will enable him to marry the lady with whom he has been living since 1949 I think it right that I should exercise my discretion in the petitioner's favour both as regards his own adultery and the delay in bringing these proceedings. The petitioner certainly did not know about his wife's adultery for more than two years prior to the filing of his petition and it may very well have been less. Such delay in the very special circumstances of the case I do not think is culpable.

There will be a decree *nisi* — absolute in three months.

Order accordingly.

Solicitors: *Battenberg & Talma.*